

with the rules adopted by the commissioner under this article, in the applicant's homeowners' insurance premiums for covered property that is constructed using an insulating concrete form system.

(b) Verification under this section must comply with the requirements prescribed under Section 3 of this article.

Sec. 3. RULES; INSPECTION. (a) *The commissioner:*

(1) shall adopt rules that prescribe the requirements for determining that a structure has been built using an insulating concrete form system; and

(2) may adopt other rules as necessary to implement this article.

(b) If determined necessary by the commissioner, the rules adopted under this section may require an inspection of the property to be insured. The applicant for insurance coverage shall pay the costs of any inspection required under this subsection.

Sec. 4. AMOUNT OF PREMIUM DISCOUNT. (a) *The commissioner shall establish by rule the amount of the premium discount applicable under this article based on sound actuarial principles.*

(b) The commissioner may approve a discount greater or less than the discount established under Subsection (a) of this section if:

(1) the insurer files the proposed discount with the department; and

(2) the commissioner determines that the proposed discount is actuarially justified.

SECTION 2. Article 5.33E, Insurance Code, as added by this Act, applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2004. A policy delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2003.

Passed the Senate on May 8, 2003: Yeas 31, Nays 0; passed the House on May 28, 2003, by a non-record vote.

Approved June 20, 2003.

Effective September 1, 2003.

CHAPTER 1181

S.B. No. 597

AN ACT

relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subtitle B, Title 5, Occupations Code, is amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. *In this chapter:*

(1) "Administrator" means the person responsible for the administration of a legal service contract. The term includes a person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Executive director" means the executive director of the Texas Department of Licensing and Regulation or the executive director's designee.

(6) "Financial security" means a surety bond, a certificate of deposit, or any other item approved by the executive director.

(7) "Legal service contract" means an agreement:

(A) that is entered into for a separately stated consideration; and

(B) under which the company obtains legal services for a legal service contract holder through a contracting attorney.

(8) "Legal service contract holder" means the person who purchases or otherwise holds a legal service contract or who is covered under a group legal service contract.

(9) "Person" means an individual or a partnership, company, corporation, association, or other private group.

(10) "Sales representative" means a person who sells or solicits legal service contracts to a person on behalf of a company.

Sec. 953.002. **EXEMPTIONS.** This chapter does not apply to:

(1) a nonprofit legal services corporation under Chapter 961, Insurance Code;

(2) an automobile club supplying services under Chapter 722, Transportation Code;

(3) a prepaid legal services program under Chapter 951;

(4) a lawyer referral service under Chapter 952;

(5) a retainer contract between an attorney and a client, and similar contracts made with a group of clients involved in the same or closely related legal matters; or

(6) a contingency fee contract between an attorney and a client.

Sec. 953.003. **EXEMPTIONS FROM CERTAIN OTHER LAWS.** The acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Sec. 953.004. **PREPAID LEGAL SERVICE CONTRACT PROGRAMS.** (a) An insurer who issues or renews prepaid legal service contracts under Article 5.13-1, Insurance Code, shall notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. An insurer that complies with this section is exempt from the requirements of:

(1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D, and 21.49-2E, Insurance Code; and

(2) Chapter 827, Insurance Code.

(b) The exemptions described by Subsection (a) begin on the date the commissioner receives the notice under Subsection (a) and apply until the insurer registers with the department as required by Section 953.052.

Sec. 953.005. **POWERS AND DUTIES OF EXECUTIVE DIRECTOR.** (a) The executive director may investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state.

(b) On request of the executive director, a company or sales representative shall make the records relevant to the regulation of legal service contracts in this state available to the

executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

(c) After contacting the company that has contracted with the contracting attorney, the executive director may refer a complaint received by the department concerning the performance of a contracting attorney to:

- (1) the State Bar of Texas;*
- (2) the appropriate licensing agency of another jurisdiction, if applicable; or*
- (3) any person designated by law to receive complaints from the public concerning the performance of an attorney.*
- (d) The executive director may adopt rules as necessary to implement this chapter.*

[Sections 953.006–953.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with the department. A company's contract may only be sold by a sales representative who is registered with the department.

(b) A person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the department. The application must be in the form prescribed by the executive director.

(b) An application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) An application for registration as a sales representative must include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. FEES. (a) The executive director shall develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. The executive director shall set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) In addition to the annual registration fee required by Subsection (a), the executive director shall annually collect from each company a fee equal to the difference between an amount equal to 1.7 percent of the amount a company collects for legal service contracts sold by the company in this state in the current year and the amount the company paid to the state in franchise taxes in the same year. The executive director shall establish a schedule and procedure for collecting this fee.

(c) To be registered, a company must pay the appropriate fees required by this section.

Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL SERVICE CONTRACTS SOLD. Information concerning the number of legal service contracts sold by a company that is submitted under Section 953.053 is a trade secret to which Section 552.110, Government Code, applies.

Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES REPRESENTATIVES. (a) The executive director may deny an application from a sales representative who:

- (1) made a material misrepresentation or fraudulent statement in the application;*
- (2) has had a license revoked under the Insurance Code;*
- (3) has had a license suspended or revoked under Section 82.062, Government Code; or*
- (4) fails to pay the fee required under Subsection (b).*

(b) *Each registered sales representative shall pay an annual registration fee in the amount set by the executive director to cover the costs of administering this chapter.*

Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION. The executive director may adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Sec. 953.057. RENEWAL OF REGISTRATION. The executive director shall adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals.

[Sections 953.058–953.100 reserved for expansion]

SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the faithful performance of a company's obligations to its legal service contract holders, each company must deposit and maintain a form of financial security with the executive director. The financial security deposited with the director must maintain at all times the following market values:

(1) a company generating \$300,000 or less in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$50,000 with the executive director;

(2) a company generating more than \$300,000 but less than \$750,000 in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$75,000 with the executive director; and

(3) a company generating \$750,000 or more in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$100,000 with the executive director.

(b) For purposes of Subsection (a), if a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13–1, Insurance Code, the company shall deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts under the Insurance Code in the preceding year.

(c) The department is responsible for the safeguarding of financial security deposited with the executive director under this section. Financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders.

(d) The executive director may order an increase in the amount of financial security required of a company under this section if the executive director finds that there has been a substantial change in the company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue.

(e) Not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), the company may request a hearing on the issue. The executive director shall hold a hearing not later than the 30th day after the date a company requests a hearing.

(f) Failure of a company to meet the financial security requirements in this section not later than the 30th day after the date the executive director issues a final decision in the event of a hearing or the 30th day after the date the period for submitting a request for a hearing expires constitutes a ground for revocation of the company's registration.

Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY. (a) If a company's financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, the company shall:

(1) replace the financial security; or

(2) *notify the executive director of the company's intention to renew the financial security.*

(b) *If, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security, the executive director may draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter.*

Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY. *The executive director shall maintain a company's financial security deposit so long as the company continues to do business in this state. When a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state, the executive director shall release the deposited financial security to the company.*

Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) *The state, on behalf of a legal service contract holder injured because of a company's violation of this chapter, may bring a suit for payment from the company's financial security deposit held by the executive director.*

(b) *The state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. This chapter does not create a private right of action.*

(c) *The state may only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract.*

(d) *The court shall determine the amount the executive director shall pay the consumer from the company's financial security deposit held by the executive director.*

Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS. (a) *The executive director shall annually review:*

(1) *the audited financial statements of a company; and*

(2) *a certified statement describing the company's reserves, if any.*

(b) *The statement described by Subsection (a)(2) must be made by an actuary who is a member in good standing of the American Academy of Actuaries.*

(c) *After reviewing the information described by Subsection (a), the executive director may require a company to maintain certain reserves in order for the company to obtain or maintain the company's registration.*

[Sections 953.106–953.150 reserved for expansion]

SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.151. COMPANY REQUIREMENTS. (a) *A company may not sell, offer for sale, or issue a legal service contract in this state unless the company gives the legal service contract holder:*

(1) *a receipt for, or other written evidence of, the purchase of the contract; and*

(2) *a copy of the legal service contract.*

(b) *A company shall perform the services as stated in the legal service contract.*

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. *A company may issue group legal service contracts. The company shall provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.*

Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. *A contracting attorney must:*

(1) *be licensed in the jurisdiction in which the legal services are performed;*

(2) *be in good standing with the entity that licenses attorneys in that jurisdiction; and*

(3) maintain professional liability and errors and omissions insurance with minimum annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED. A company may not interfere with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

Sec. 953.155. COMPANY RECORDS. (a) A company shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The company's records must include:

(1) a copy of each unique form of legal service contract filed with the executive director under Section 953.156;

(2) the name and address of each legal service contract holder;

(3) a list of the sales representatives authorized by the company to market, sell, or offer to sell the company's legal service contracts;

(4) a copy of each contract entered into between the company and a contracting attorney; and

(5) a list of complaints the company has received from legal service contract holders, including the name of the sales representative involved in the transaction leading to the complaint.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the company must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a company shall retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract.

(d) A company that discontinues business in this state shall retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the company has discharged all obligations to legal service contract holders in this state.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) A legal service contract must be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Any subsequent endorsement or attachment to the contract must also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

(b) A legal service contract marketed, sold, offered for sale, administered, or issued in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) include the name and full address of the company;

(3) include the purchase price of the contract and the terms under which the contract is sold;

(4) include the terms and restrictions governing cancellation of the contract by the company or the legal service contract holder;

(5) identify:

(A) any administrator, if the administrator is not the company;

(B) the sales representative; and

(C) the name of the legal service contract holder;

(6) include the amount of any deductible or copayment;

(7) specify the legal services and other benefits to be provided under the contract, and any limitation, exception, or exclusion;

(8) specify the legal services, if any, for which the company will provide reimbursement and the amount of that reimbursement;

(9) specify any restriction governing the transferability of the contract or the assignment of benefits;

- (10) include the duties of the legal service contract holder;
- (11) include the contact information for the department, including the department's toll-free number and electronic mail address, as well as a statement that the department regulates the company and the company's sales representatives;
- (12) explain the method to be used in resolving the legal service contract holder's complaints and grievances;
- (13) explain how legal services may be obtained under the legal service contract;
- (14) include a provision stating that no change in the contract is valid until the change has been approved by an executive officer of the company and unless the approval is endorsed or attached to the contract;
- (15) include any eligibility and effective date requirements, including a definition of eligible dependents and the effective date of their coverage;
- (16) include the conditions under which coverage will terminate;
- (17) explain any subrogation arrangements;
- (18) contain a payment provision that provides for a grace period of at least 31 days;
- (19) include conditions under which contract rates may be modified; and
- (20) include any other items required by the executive director as determined by rule.

Sec. 953.157. **TERMINATING A LEGAL SERVICE CONTRACT.** A legal service contract holder may terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

Sec. 953.158. **VOIDING A LEGAL SERVICE CONTRACT.** (a) If a legal service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void.

(b) A legal service contract holder may void the legal service contract at a later time as provided by the contract.

(c) If a legal service contract is voided, the company shall refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the contract. If the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. The monthly penalty may not exceed 10 percent of the amount outstanding.

(d) The right to void a legal service contract is not transferable.

Sec. 953.159. **CANCELING A LEGAL SERVICE CONTRACT.** (a) A company may cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. The company must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The company is not required to provide prior notice of cancellation if the legal service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) a material misrepresentation by the legal service contract holder to the company;
- (3) a substantial breach of a duty by the legal service contract holder; or
- (4) cancellation of the contract by the legal service contract holder.

Sec. 953.160. **LIMITATIONS ON COMPANY NAME.** (a) A company may not use a name that:

- (1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) This section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. A company described by this subsection must include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Sec. 953.161. **MISLEADING STATEMENTS PROHIBITED.** A company, a sales representative, or a representative of a sales representative may not, in the company's contracts or marketing:

- (1) make, permit, or cause to be made any false or misleading statement; or
- (2) deliberately omit a material statement if the omission would be considered misleading.

Sec. 953.162. **APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR.**

(a) A company may appoint an administrator or designate a person to be responsible for:

- (1) all or any part of the administration or sale of legal service contracts; and
- (2) compliance with this chapter.

(b) The executive director may adopt rules regarding the registration of an administrator with the department.

[Sections 953.163–953.200 reserved for expansion]

SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 953.201. **DISCIPLINARY ACTION.** On a finding that a ground for disciplinary action exists under this chapter, the executive director may impose an administrative sanction, including any administrative penalty, as provided by Chapter 51.

Sec. 953.202. **EMERGENCY CEASE AND DESIST ORDER.** (a) The executive director may issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public.

(b) The executive director may issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances.

(c) The executive director shall set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

Sec. 953.203. **INJUNCTIVE RELIEF; CIVIL PENALTY.** (a) The executive director may institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352.

Sec. 953.204. **ADMINISTRATIVE PROCEDURE.** Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.

Sec. 953.205. **APPEAL.** A person affected by a ruling, order, decision, or other action of the executive director or department may appeal by filing a petition in a district court in Travis County.

SECTION 2. Article 5.13–1, Insurance Code, is amended by adding Subsection (h) to read as follows:

(h) An insurer may not issue or renew a prepaid legal service contract under this article after March 1, 2004.

SECTION 3. Subsection (b), Section 951.003, Occupations Code, is amended to read as follows:

(b) A law pertaining to *legal service contracts under Chapter 953* or insurance does not apply to a program under this chapter.

SECTION 4. (a) Chapter 953, Occupations Code, as added by this Act, applies only to:

- (1) a legal service contract entered into on or after March 1, 2004; or
- (2) a legal service contract entered into before March 1, 2004, that meets the requirements of Subsection (c) of this section.

(b) A person regulated under Chapter 953, Occupations Code, as added by this Act, is not required to comply with that chapter until March 1, 2004, but may implement the requirements of that chapter before March 1, 2004. The failure of a legal service contract company or other person to comply with Chapter 953, Occupations Code, as added by this Act, or otherwise to administer a legal service contract plan in the manner required by that chapter before March 1, 2004, is not admissible in any court, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected legal service contract was unlawful or otherwise improper.

(c) The Texas Department of Licensing and Regulation and the Texas Department of Insurance may enter into a memorandum of understanding for a transition plan to transfer the regulation of legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. The transition plan at a minimum shall:

- (1) allow persons licensed under Chapter 21, Insurance Code, who have not registered with the Texas Department of Licensing and Regulation to continue to sell legal service contracts regulated by the Texas Department of Licensing and Regulation until March 1, 2004; and

- (2) allow a prepaid legal service contract issued subject to Article 5.13-1, Insurance Code, to be maintained by the legal service contract holder if:

(A) the insurer that issued the contract or a related entity is registered with the Texas Department of Licensing and Regulation under Chapter 953, Occupations Code, as added by this Act, not later than March 1, 2004;

(B) the legal service contract complies with the requirements established by Chapter 953, Occupations Code, as added by this Act, for a legal service contract; and

(C) any addition or deletion to the contract made by a legal service contract company registered with the Texas Department of Licensing and Regulation is approved by the company and the approval is endorsed or attached to the contract.

SECTION 5. This Act takes effect September 1, 2003.

Passed the Senate on March 26, 2003, by a viva-voce vote; the Senate concurred in House amendments on May 29, 2003, by a viva-voce vote; passed the House, with amendments, on May 25, 2003, by a non-record vote.

Approved June 20, 2003.

Effective September 1, 2003.

CHAPTER 1182

S.B. No. 631

AN ACT

relating to the suspension of sentence and the deferral of adjudication in cases involving certain misdemeanor traffic offenses.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 45.051, Code of Criminal Procedure, is amended to read as follows:

Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the *judge* [justice]